



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Edward W. Dunbar
Dunbar & Barill, L.L.P.
1700 North Stanton
El Paso, Texas 79902

OR95-845

Dear Mr. Dunbar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31666.

The El Paso Community College District (the "college") received an open records request for various documents that were generated during the college's evaluation and selection process for a physics instructor faculty position. The college contends that portions of the evaluation forms and applications generated during the review of the candidates express advice, opinions, and recommendations which are excepted from required public disclosure by section 552.111 of the Government Code. You state that the college has no difficulty releasing the requestor's individual evaluation or ranking in the applicant pool, however, it is concerned with the public disclosure of the identity, evaluation and ranking of the other unsuccessful candidates. Additionally, you contend that section 552.102(b) excepts from required disclosure the applicants' transcripts submitted with their applications. You have submitted for our review, the documents which you contend contain information that is excepted from required public disclosure.

Section 552.111 excepts from required disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 at 5, in light of *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), this office concluded that information excepted from disclosure under section 552.111 "must be related to the policymaking functions of the governmental body." See also Open Records Decision No. 631 (1995) at 3. "[P]olicymaking functions of a governmental body include advice, recommendations, and opinions regarding administrative and personnel matters of a broad scope that affect the governmental body's policy mission." *Id.* We indicated

in Open Records Decision No. 631 (1995) at 3, on the other hand, that an agency's policymaking functions do not encompass information that pertains solely to internal administrative or personnel matters. Furthermore, section 552.111 does not except from disclosure purely factual information that is severable from the advice and opinion portions of internal memoranda. *Id.*

The documents you have submitted for our review relate solely to the college's hiring of a physics instructor. This is a college personnel matter and not a policymaking function. Consequently, none of the documents you have submitted for our review may be withheld from required disclosure pursuant to section 552.111 of the Government Code.

You contend that section 552.102(b) of the Government Code excepts from required disclosure the applicants' transcripts submitted with their applications for the instructor position. You state that two of the three finalists for the instructor position are currently employed by the college and that the third is not a college employee.

Section 552.102(b) provides the following:

Information is excepted from [required public disclosure] if it is a transcript from an institution of higher education *maintained in the personnel file* of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on the transcript on the personnel file of the employee. [emphasis added].

This provision requires "governmental bodies to edit from professional public school employees' transcripts information other than the employee's name, the degree obtained, and the courses taken." Open Records Decision No. 526 (1989). This means that grades must be deleted as well as any extraneous information appearing on the transcripts. *Id.*

Regarding the two applicants that are currently teaching at the college, pursuant to section 552.102(b), you must disclose the portions of their transcripts addressing their name, the degree obtained, and the courses taken. You must withhold any other extraneous information appearing on these two transcripts. Regarding the applicant who is not currently employed by the college, you must release his complete transcript to the requestor since you have shown no exception by which to withhold the information.

Since you inform us that two of the applicants for the instructor position are currently employed by the college as instructors, we note that section 552.024 of the Government Code provides a procedure whereby an employee or official of a governmental body may choose to prohibit the disclosure of his home address and telephone number. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024.

Therefore, if the two applicants have properly requested that their home addresses and telephone numbers be kept confidential in accordance with section 552.024 then, pursuant to section 552.117, this information may be withheld from required public disclosure.¹

Regarding the social security numbers appearing on the submitted documents, we note that federal law may prohibit disclosure of the social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994); see also 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the college should ensure that the information is not confidential under this federal statute.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

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¹The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code ch. 552) (copy available from House Document Distribution). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

Ref: ID# 31666

Enclosures: Submitted documents

cc: Dr. Wayne J. Peebles
6917 Orizaba
El Paso, Texas 79912
(w/o enclosures)